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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,651	03/01/2002	Brent Townshend	01-185-A	7884
7590	08/30/2006			EXAMINER OPSASNICK, MICHAEL N
Matthew J. Sampson McDonnell Boehnen Hulbert & Berghoff 32nd Floor 300 S. Wacker Drive Chicago, IL 60606			ART UNIT 2626	PAPER NUMBER

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/087,651	TOWNSHEND ET AL.	
	Examiner Michael N. Opsasnick	Art Unit 2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 01 May 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1,2,4-24,26,28,29,32-38 and 40-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-24,26,28-30,32-38 and 40-45 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    6) Other: \_\_\_\_\_

## **DETAILED ACTION**

1. As per the pre-appeal conference review conducted on June 7, 2006, (and mailed on June 12, 2006), the finality of the Office Action mailed 2/1/2006 is removed and prosecution on the merits has been reopened. In the pre-appeal conference review, as per the recommendation of QAS Tommy Chin, 35 U.S.C. 101 (MPEP 2105) will be applied to claims 1,2,4,6,11-15,19,21,23,24,26,29,32,34,36,37,38,41- 45. Furthermore, as per the recommendation of QAS Tommy Chin, the claim language that will be addressed by this particular aspect of 35 U.S.C. 101 will not be interpreted by the examiner for art related examination purposes. Below is an office action following these aforementioned guidelines.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1,2,4,6,11-15,19,21,23,24,26,29,32,34,36,37,38,41- 45 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims contain language whose scope pertains to a human being, which is deemed non-statutory subject matter under 35 U.S.C.101 (See MPEP 2105: “If the broadest reasonable interpretation of the claimed invention as a whole encompasses a human being, then a rejection under 35 U.S.C. 101 must be made indicating that the claimed invention is directed to nonstatutory subject

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matter.”). As such, any claim language in the claims pertaining to the human listener, speaker, and/or people is directed toward non-statutory subject matter under 35 U.S.C. 101. As an example, in claim 1, the language “a human listener that hears a speaker who is repeating items and repeats aloud what is heard, wherein the listener does not know a text of the items the speaker repeated prior to hearing the speaker repeating the items”, the language “of what the listener repeats” is non-statutory subject matter. As an example in claim 2, the claim language “the speaker is at least one person whose intelligibility is to be measured” is non-statutory subject matter. As an example in claim 4, the claim language “the listener is a plurality of people capable of listening’ is non-statutory subject matter. As an example in claim 6, the claim language “of what the listener heard when the speaker repeated the items” is non-statutory subject matter. As an example in claim 9, the claim language “of a listener” is non-statutory subject matter. Similar language found in the remaining claims, with similar scope and content of these claim examples, also contain non-statutory subject matter. Furthermore, the examiner will not attempt to interpret these claim limitations for art related examination purposes.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,5,7-11,16-24,28,33-36,38,40,45 are rejected under 35 U.S.C. 102(b) as being anticipated by Baker (4783803).

As per claim 1, Baker (4783803) teaches a means for automatically preparing a transcription (as using a speech recognized in a word processor to present text – col. 45 line 54 – col. 46 line 4); means for automatically comparing the text of the items with the transcription (as allowing the operator to compare the transcribed text to see if it is accurate – col. 45 lines 29-40); and a means for measuring intelligibility coupled to the comparing means (as scoring and tracking recognized words, and next best guess words – fig. 8; cols. 43-44).

As per claim 5, Baker (4783803) teaches the items being words (col. 43 lines 50-55).

As per claims 7-10, Baker (4783803) teaches generating a list of bestwords, close call words (col. 44 lines 25-450, and also tracks the error rates/scoring for each word in a node scoring list for the initial and currently active vocabulary (Fig. 8, subblocks 278-288; to 108,112; Baker (4783803) is teaching an intelligibility of the system to track and update word lists and language models based on how many times a word is a “bestword”, or “close call words”, etc.).

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Claims 11,16-24, 28, 33-36, 38, 40, 45 are system and method claims that are similar in scope and content as claims 1,5,7-10; therefore, claims 11,16-24,28,33-36,38,40,45 are rejected under similar rationale as presented above against claims 1,5,7-10.

***Response to Arguments***

6. Applicant's arguments filed 5/1/2006 have been fully considered but are moot in view of the new grounds of rejection.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Opsasnick, telephone number (571)272-7623, who is available Tuesday-Thursday, 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richemond Dorvil, can be reached at (571)272-7602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mno  
8/29/2006

  
\_\_\_\_\_  
Michael N. Opsasnick  
Examiner  
Art Unit 2626